

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE BEXTRA AND CELEBREX MARKETING,) CASE NO. MDL No. 1699
SALES PRACTICE, AND PRODUCT LIABILITY)
LITIGATION)
This Document Relates to:)
Harril Glen Scott, 12-2033.)
) [PROPOSED] ORDER GRANTING
DEFENDANT PFIZER INC'S
MOTION TO DISMISS
PLAINTIFF'S CLAIMS WITH
PREJUDICE
)
PTO 31 COMPLIANCE MOTION
NO. 10
)
Date: March 29, 2013
Time: 10:00 a.m.
Judge: Hon. Charles R. Breyer, U.S.D.J
)

THIS MATTER having come before the Court on Defendant Pfizer Inc's Expedited Motion to Dismiss Plaintiff's Claims with Prejudice; the parties having received due notice and having had the opportunity to be heard; and this Court having considered all submissions made in support of and in opposition to the motion, this Court finds as follows:

Plaintiff Harril Glenn Scott has failed to comply with Pretrial Order No. 31 (“PTO 31”) by failing to provide Defendant with a complete set of documents responsive to the requests contained in the Docket Data Sheet (“DDS”) and a Case-Specific Expert Report that complies with PTO 31 (collectively, “documents required under PTO 31”). Plaintiff’s failure to file the

[PROPOSED] ORDER GRANTING DEFENDANT PFIZER'S MOTION TO DISMISS PLAINTIFF'S CLAIMS WITH PREJUDICE – M:05-CV-01699-CRB

1 comply with the order issued by the Special Master, Judge Fern M. Smith (Ret.) on January 31,
 2 2013, requiring Plaintiff to provide the material required by PTO 31 by February 12, 2013 or face
 3 dismissal with prejudice (“the Compliance Order”). Plaintiff’s failure is particularly egregious
 4 given the numerous efforts the Court and Defendant have made to provide notice of Plaintiff’s
 5 discovery obligations. (*See* Pfizer Defs.’ Mem. of P. & A. in Supp. of Mot., at 3-5; Declaration
 6 of Michelle W. Sadowsky in Supp. of Pfizer Defs.’ Mot. to Dismiss, ¶¶ 4-19.)

7 Based on these failures, the Court also finds as follows:

8 (1) The public’s interest in expeditious resolution of this litigation is compromised by
 9 Plaintiff’s failure to comply with PTO 31 and the Special Master’s Compliance Order. This
 10 Court and the public have an overriding interest in securing the just, speedy, and inexpensive
 11 determination of every action. Plaintiff’s delay is unreasonable and has impeded the resolution of
 12 these matters.

13 (2) The Court’s need to manage its docket is compromised by Plaintiff’s failure to
 14 comply with PTO 31 and the Special Master’s Compliance Order. Dismissal of Plaintiff will
 15 serve to appropriately penalize him for his non-compliance and also will encourage other
 16 plaintiffs to comply with this Court’s case management orders.

17 (3) Defendant Pfizer is prejudiced by Plaintiff’s failure to comply with PTO 31 and
 18 the Special Master’s Compliance Order. Without the material required by PTO 31, Defendant
 19 Pfizer cannot meaningfully evaluate Plaintiff’s case for resolution or evaluate other alternatives
 20 for disposing of Plaintiff’s case.

21 (4) The public policy favoring disposition on the merits is overridden by Plaintiff’s
 22 failure to comply with PTO 31 and the Special Master’s Compliance Order. The Court finds that
 23 Plaintiff’s failure to provide the required material obstructs resolution of his claims on the merits.
 24 A case that is stalled or unreasonably delayed by a party’s failure to comply with deadlines and
 25 discovery obligations cannot move forward toward resolution on the merits. Accordingly, this
 26 dismissal factor does not weigh in favor of Plaintiff at all.

27 (5) There are no less drastic sanctions available to force Plaintiff to comply with this
 28 Court’s orders. The Court finds that PTO 31 and the Special Master’s Compliance Order both
 [PROPOSED] ORDER GRANTING PFIZER DEFENDANTS’ MOTION TO DISMISS PLAINTIFF’S CLAIMS
 WITH PREJUDICE – M:05-CV-01699-CRB

1 provide specific warnings stating that Plaintiff's claims may be dismissed with prejudice for
2 failure to comply with their obligations. The Court also finds that Plaintiff received warning
3 letters from Defendant that did not prompt compliance.

4 Accordingly, after weighing the dismissal factors discussed in *Malone v. U.S. Postal*
5 *Serv.*, 833 F.2d 128, 130 (9th Cir. 1987), and *In re Phenylpropanolamine (PPA) Prods. Liab.*
6 *Litig.*, 460 F.3d 1217 (9th Cir. 2006), and in light of this Court's role in overseeing this
7 multidistrict litigation, the Court hereby finds that dismissal of Plaintiff's claims with prejudice is
8 warranted.

9 THEREFORE, IT IS HEREBY ORDERED THAT Defendant Pfizer's Expedited Motion
10 is GRANTED and the claims of Plaintiff Harril Glen Scott's are DISMISSED WITH
11 PREJUDICE.

12 **IT IS SO ORDERED.**

13 Dated: _____, 2013

14

HONORABLE CHARLES R. BREYER
15 UNITED STATES DISTRICT JUDGE
16
17
18
19
20
21
22
23
24
25
26
27
28